

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 14-CR-239

KYLE ALLEN SMITH,

Defendant.

---

**ORDER DENYING MOTION TO DISMISS**

---

Defendant Kyle Allen Smith is charged with two counts relating to the possession and use of Ricin, a toxin derived from castor beans. In Count 1 of the Indictment, Smith is charged with knowingly developing, producing, retaining, and possessing a toxin—Ricin—for use as a weapon and attempting to do the same, in violation of 18 U.S.C. § 175(a). In Count 2, Smith is charged with knowingly possessing a toxin—Ricin—which was not in its naturally occurring form and was of a type and quantity that, under the circumstances, was not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose, in violation of 18 U.S.C. § 175(b).

On December 31, 2014, Smith filed a motion to dismiss the Indictment on the ground that the statutes under which he was charged were unconstitutionally void for vagueness, and therefore deprived him of due process as required by the Fifth Amendment to the United States Constitution. Alternatively, Smith argued that under the rule of lenity, which requires that penal statutes be strictly construed in favor of the defendant, his conduct did not come within the purview of the statute.

As is the practice in this district, pretrial proceedings in criminal cases are referred to the assigned magistrate judge. On January 23, 2015, Magistrate Judge William E. Callahan issued a

thorough Report and Recommendation that Smith's motion be denied. Smith objected, but elected not to file additional briefs and instead directed the Court to the briefs he had already filed in support of his motion before the magistrate judge. Having carefully considered the briefs and the Report and Recommendation, the Court, as it has previously orally advised the parties it would do, hereby adopts the Report and Recommendation of Magistrate Judge Callahan and denies the motion to dismiss on the grounds asserted. Smith has not raised, however, and the Court has therefore not addressed the question of whether Congress acted within its authority in enacting 18 U.S.C. § 175. *See Bond v. United States*, 134 S. Ct. 2077 (2014); and *United States v. Baker*, 98 F.3d 330 (8th Cir. 1996).

**SO ORDERED**, this 6th day of March, 2015.

s/ William C. Griesbach  
William C. Griesbach, Chief Judge  
United States District Court